IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND SEVEN

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE P.SWAROOP REDDY

WRIT PETITION No.302 OF 2007

Between:

Syed Chand Basha

..... PETITIONER

AND

The Government of Andhra Pradesh,
Rep. by its Principal Secretary,
Roads and Buildings, Secretariat,
Hyderabad, and others.

....RESPONDENTS

THE HON'BLE MR JUSTICE
J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE
P.SWAROOP REDDY

WRIT PETITION No.302 OF 2007

O R D E R

(Per Sri Justice J.Chelameswar)

Aggrieved by the decision of the A.P. Administrative Tribunal in not granting an interim order in O.A.No.7413 of 2006 and ordering notice on the Miscellaneous Application, the present writ petition is filed with a prayer as follows:

> **"…Hon'ble Court may be pleased to declare the action of the Hon'ble APAT in not granting interim order in O.A.No.7413 of 2006 on 13-12-2006, eventhough there is prima facie case and balance of convenience is in favour of the petitioner as illegal and contrary to Law and further declare that the proceedings no.EC1/51/98 dated 25-11-2006 of the 3rd respondent is arbitrary, illegal and violative of Principles of Natural Justice and Art.14 and 16 of the Constitution of India and set a side the same, directing the respondents to re-instate the petitioner into service forthwith by issuing a Writ, order or direction more particularly one in the nature of Writ of Mandamus and to pass such other …"**

The petitioner is working as Junior Assistant in the office of Executive Engineer, R & B, Repalle, Guntur District from 1996. Admittedly, a criminal case in Crime No.199 of 2005 for the offence under Section 420 IPC was registered in Kothapet Crime Police Station, Guntur. In view of the registration of the crime and pendency of the investigation, the petitioner was kept under

suspension by proceedings dated 08.07.2005 with effect from 04.06.2005. Challenging the same, the petitioner earlier approached the A.P. Administrative Tribunal by filing O.A.No.5383 of 2005. By an order dated 14.09.2005 the Tribunal directed the respondents 3 and 4 herein to reinstate the petitioner into service. The petitioner asserts in the affidavit at para 4 that the Tribunal directed reinstatement of the petitioner into service by order dated 14.09.2005. In fact, a copy of the said order was placed in the material papers along with the present writ petition. We noticed that the Tribunal in fact did not direct reinstatement of the petitioner, but only directed to review the decision to keep the petitioner under suspension in view of the representations made by the petitioner. The relevant portion of the order reads as follows:

> **"Therefore, the 2nd respondent is directed to review the suspension of the applicant by taking into account the relevant Government instructions and pass appropriate orders on the representations of the applicant dated 30.7.2005 and 8.8.2005, within a period of 6 weeks from the date of receipt of this order and in case of not passing any orders on the representations of the applicant and reviewing the suspension of the applicant within the stipulated time, the applicant should be re-inducted into service."**

As a consequence, the petitioner was reinstated into service by proceedings dated 31.10.2005 of the third respondent,.

However, by an order dated 25.11.2006, the third respondent once again decided to keep the petitioner under suspension for the same reason on which the petitioner was kept under suspension earlier. The third respondent states that such a decision is being taken in pursuance of the instructions issued in two memos referred to therein. Copies of the memos are placed before this Court at the time of arguments put forth by the learned Government Pleader. These memos are issued by the Government directing the Engineer-in-Chief (R & B), Administration, to advice the competent authorities to place the petitioner under suspension vide Memo dated 13.11.2006, the relevant portion of which reads as follows:

> **"2. He is therefore requested to advise the competent**

authorities to place Sri Syed Chand Basha, Junior Assistant under suspension in terms of Rule 8(1)[c] of Andhra Pradesh civil Services (CC & A) Rules, 1991 and also to initiate departmental proceedings against him for violation of Rule 10(1) of Andhra Pradesh civil Services (Conduct) Rules, 1964."

By memo dated 24.11.2006 the Government while reiterating its decision to direct the third respondent herein to keep the petitioner under suspension, also called upon the third respondent to offer an explanation for his decision to reinstate the petitioner into service ostensibly in pursuance of the order of the A.P. Administrative Tribunal dated 14.09.2005. The relevant portion of the memo dated 24.11.2006 reads as follows:

" A copy of Government Memo is herewith communicated to the Superintending Engineer (R&B) Guntur. He is requested to place the above Junior Assistant under suspension immediately as per C.C.A Rules and also as per the orders at Government.

He is requested to send a copy of suspension order by FAX to this Office so as to send a report to Government.

Further, he is also instructed to submit the explanation for reinstating the suspended Junior Assistant when he was on bail."

Therefore, the third respondent passed the impugned order dated 25.11.2006, which was once again challenged in O.A.No.7413 of 2006. In the O.A. the Tribunal ordered notice in the miscellaneous application where the petitioner sought suspension of the proceedings dated 25.11.2006, hence the present writ petition.

Learned counsel for the petitioner argued that the impugned proceedings dated 25.11.2006 suffer from the vice of acting to the dictates of the superiors by the third respondent. The third respondent never applied his mind independently before taking the decision such as the one in the proceedings dated 25.11.2006 and he could not have taken the present decision in view of his earlier decision to reinstate the petitioner into service.

On the other hand, learned Government Pleader submitted that Rule-15 of CCA Rules authorizes any authority, which is superior to the appointing authority, to take a decision to keep any Government servant under suspension and such power is conferred on the authorities superior to the appointing authorities, and therefore, the memos dated 24.11.2006 and 13.11.2006 are to be construed as decisions of the Government to keep the petitioner under suspension, which was taken in exercise of the power conferred under the abovementioned Rule-15 of CCA Rules.

It is an unfortunate state of affairs that though the law authorizes the State under Rule-15 of CCA Rules to take a decision such as the one in the instant case to keep the petitioner under suspension for valid reasons, the State did not take the decision, but only advised the Appointing Authority – third respondent herein to keep the petitioner under suspension. Such an act, in our view, is clearly illegal for two reasons; if the decision is to be taken by the State in exercise of the power under Rule-15 of CCA Rules, the State ought to have passed the order straightaway keeping the petitioner under suspension, and any decision either of the State or one of its officers may eventually culminate in an order and for whatever reason, the State did not pass such an order, but advised the third respondent to pass such an order. Therefore, in our view, there is no decision by the State in exercise of the power conferred under Rule-15 of CCA Rules. Thus, the impugned order passed by the third respondent is an order acting to the dictates of the superiors, which is impermissible in view of the settled principles of Administrative Law, and we are of the opinion that referring to precedents in this regard would only be an idle exercise of repeating the familiar learning.

In the light of the above circumstances, we are of the opinion, that the Tribunal was not justified in declining to grant an interim order. It is a clear case where the O.A. itself is required to be allowed for the reasons mentioned above.

Therefore, the writ petition is required to be allowed and the same is accordingly allowed at the admission stage itself after hearing the learned counsel for the petitioner as well as the learned Government Pleader. The

order of the third respondent, which is impugned in O.A.No.7413 of 2006, dated 13.12.2006 is quashed. However, it is open to the respondents to take appropriate action against the petitioner in accordance with law, if they are so advised.

JUSTICE J.CHELAMESWAR

JUSTICE P.SWAROOP REDDY

8th FEBRUARY, 2007
PGS

THE HON'BLE MR JUSTICE
J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE
P.SWAROOP REDDY

WRIT PETITION No.302 OF 2007

(Per Sri Justice J.Chelameswar)

8th FEBRUARY, 2007